

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DUANE ROACH #A-64235,)	
)	
Petitioner,)	
)	
v.)	No. 10 C 5352
)	
WARDEN GUY PIERCE, PONTIAC)	
CORRECTIONAL FACILITY,)	
)	
Respondent.)	

STATEMENT AS TO CERTIFICATE OF APPEALABILITY

Habeas petitioner Duane Roach ("Roach") has filed a Notice of Appeal from this Court's October 26, 2010 denial of his motion to reconsider its September 29, 2010 memorandum opinion and order ("Opinion"), which had dismissed Roach's 28 U.S.C. §2254¹ Petition for Writ of Habeas Corpus Relief ("Petition") as untimely. That appeal calls for this Court (1) either to issue a certificate of appealability or state why it finds such a certificate should not issue and (2) to rule on Roach's motion to proceed on appeal in forma pauperis.

As for the first of those matters, Roach does not challenge the Opinion's determination that Section 2244(d) barred the Petition as untimely--he rather states that he had mistakenly believed the statutory time clock had been tolled. What he argues instead is that he qualifies for relief "Under the Doctrines of Fundamental Fairness; Miscarriage of Justice and

¹ All further references to Title 28's provisions will simply take the form "Section--."

Legal Innocence.”

But stating that position does not make it so. This Court’s consideration of the Petition discloses no colorable basis for applying those exceptions to the statutory time bar. Accordingly this Court states its view that no certificate of appealability should issue.

As for in forma pauperis status, the fees required on appeal (a total of \$455) are dramatically different from the modest \$5 fee payable by a Section 2254 petitioner at the District Court level. Although Roach qualifies in financial terms for application of the installment payment provisions of Section 1915, this Court’s understanding is that the granting of in forma pauperis status requires both financial inability to pay and an arguable substantive claim. Because the latter is absent, that request by Roach is also denied.

In summary, this Court states its view that no certificate of appealability should issue and denies Roach’s request for in forma pauperis status. Both of those questions can of course be resubmitted to the Court of Appeals for its consideration.

A handwritten signature in black ink, reading "Milton I. Shadur". The signature is written in a cursive, flowing style with a large initial 'M'.

Milton I. Shadur
Senior United States District Judge

Date: December 8, 2010